IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1178 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

TULSIBAI WD/O GORDHANLAL RAMBILASJI RATNAWAT

Appearance:

1. First Appeal No. 1178 of 1985

MR SN SHELAT for Petitioner No. 1

MR HARDIK C RAWAL for Petitioner No. 1

MR JC SHETH for Respondent No. 1-5

NOTICE SERVED for Respondent No. 6

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE H.K.RATHOD

Date of decision: 29/08/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE H.K.RATHOD)

Heard learned advocate Mr. Hardik C. Raval for the appellant and Mr. J.C. Sheth, learned advocate for respondent Nos. 1 to 5. Though notice of admission has been served upon respondent No. 6, nobody has appeared on behalf of respondent no. 6 in the present proceedings.

2. In this First Appeal, the appellant Gujarat State Road Transport Corporation has challenged the award made by the Motor Accident Claims Tribunal (Main) Panchmahals at Godhra in Motor Accident Claim Petition No. 783 of 1982 dated 18th December, 1984. Under the impugned award, the tribunal has, in all, awarded compensation of Rs.68,300.00 to the respondents original claimants with interest at the rate of 6 % per annum and has dismissed the rest of the claim.

3. Learned advocate Mr. Raval appearing for the appellant has submitted that the ST Bus was not responsible for the said accident and the deceased was not travelling in the bus as a passenger. He has further contended that the tribunal has committed an error in not believing the oral evidence of the driver and the conductor of the bus. He has also contended that the tribunal has committed an error in adopting multiplier of 18 while calculating the compensation.

4. Learned advocate Mr. J.C. Sheth appearing for the respondents original claimants has supported the award in question. While supporting the award in question, he has submitted that the tribunal has, while granting compensation, considered 50 per cent contributory negligence on the part of the deceased and has deducted the compensation to the extent of 50 per cent without any evidence. According to his submission, the tribunal has rightly considered the age of the deceased; the tribunal was also right in adopting the multiplier of 18 and, therefore, this Court should not interfere with the award in question.

5. We have considered the submissions made by the learned advocates for the parties. We have also perused the original record and proceedings. Upon perusal of the original record and proceedings and the award in question, it appears that the claim petition has been filed before the tribunal concerned because of the

accident alleged to have taken place at Godhra - Dahod Highway Road near Nandpura Railway Crossing on12.4.1982 between 11.00 p.m. to 2.00 a.m. The vehicle involved in the accident is the ST Bus bearing No. GRT 8255 driven by respondent No. 6 - original opponent No.1 Bus Driver, owned by the appellant corporation wherein one Gordhanlal Rambilasji Ratnawat had died. The deceased had boarded the ST Bus from Baroda as a passenger of the bus and was going to Dahod.When the bus reached near Nandapura Railway Crossing, the bus had stopped because the gate was closed. So, alongwith the other passengers, the deceased had got down to answer the call of the nature. At that time,the railway crossing gate was opened and the deceased hurriedly tried to get in the said bus but when the deceased tried to step into the bus, the driver of the bus negligently and speedily took his bus forward and the deceased was dashed on the ST Bus on the door portion of the bus and sustained serious injuries and fell down on the road. The driver and the conductor of the bus did not pay any attention. The deceased died due to the injuries received by him because of the fault on the part of the Bus Driver of the appellant Corporation. Based on these facts, the aforesaid claim petition was filed by the original claimants before the tribunal claiming compensation of Rs.1,25,000.00.

6. Before the tribunal, the claim petition filed by the respondents - original claimants was opposed by the appellant corporation by filing written statement at Exh. 7 wherein the facts stated in the claim petition were denied and the quantum of compensation claimed by the claimants as well as the reasons thereof were also challenged by the appellant corporation. It was contended by the appellant that the deceased never travelled as a passenger in the bus, no such accident had taken place, there is no stoppage at Nandapura, the story is concocted. The bus never halted at the Nandapura Railway Crossing. The deceased was never a passenger from Baroda on that day. It has been denied that the passengers got down to answer the call of nature and that the bus started after the gate opened.

6. Issues were framed by the tribunal at Exh. 9. Thereafter, the tribunal has discussed the oral as well as the documentary evidence in para 8 of the award in question. The question whether the deceased was travelling in the said Bus or not has been examined by the tribunal in para 8 of the award in question. The tribunal has considered Exh. 37 - panchanama of the place of incident and the complaint Exh. 36 and has observed that the deceased was found dead on the highway;

the PSI of Morva Police Station had written a letter to the ST Depot Manager at Dahod regarding the tickets which were found from the clothes of the dead body which is at Exh. 33. Reply to the said letter Exh.33 is at Exh.34 wherein the Senior Depot Manager has stated that the said tickets were issued by the Conductor Shri P.G. Dhanga on 12.4.1982 on the route from Barida to Dahod; the bus had left Baroda at 10.45 p.m. and reached Dahod at 2.15 a.m. The bus was GRT 8255 and the driver was A.H. Chhipa. His badge number and the ticket number have also been mentioned in the said letter and the tickets are returned to the PSI. On the basis of the said evidence, the tribunal has come to the conclusion that it is clear that the deceased was going in the bus and had purchased the said tickets in the bus which is alleged to be involved in the accident and the bus was also on the route where the accident is alleged to have taken place. It has not been challenged by the appellant before the tribunal that the deceased was the husband of the respondent no.1.

7. Thereafter, the tribunal has examined the next question as to whether the accident has taken place in the manner stated by the claimants, in para 10 of the award. The tribunal has considered the oral evidence of one eye witness Lalabhai Taherali Dalal at Exh. 44 who has stated that before two years, in the night time, he was going from Godhra to Sant Road. He came near Nanapura Railway Crossing. The crossing gate was closed and therefore, his vehicle had to stop. There was another ST Bus which had stopped ahead of them. It was the ST Bus of the Gujarat State Road Transport Corporation and was of route from Baroda to Dahod. Some people from that bus had got down for answering the call of nature. The gate thereafter opened and the passengers started getting into the bus. Before the last two passengers were to enter, the bus had started. One of them could go into the bus but the other was dashed by the door of the bus, dragged and after being dragged came under the wheel and crushed by the wheel of the bus. He was run over by the rear wheel. He and the truck driver both shouted but the bus did not stop. He told the driver to chase the bus but the truck driver refused to do it. Then, he called the gateman of the railway and informed him about the man being run over and told him to call him, if necessary.He has been cross examined at length. He has stated that the head lights of the truck were working. He did not care to note the number of the bus because he was watching the persons getting in the bus. The person was dragged because of the impact with the door of the bus. The submission made on behalf of the appellant corporation that this man did not care to

inform the police and his statement has also not been recorded and he is a got up witness has been negatived by the tribunal by considering the decision in case of Delhi Transport Corporation versus Harbans kaur and Others reported in 1983 A.C.J. page 110 wherein it has been held that the publicmen do not want to involve themselves in any investigation. It has also been held that if there is an accident, the public men do not like to come forward or to take part in the investigation. it has also been held that failure of the witness to wait till the arrival of the police to make a statement was not a good ground for disbelieving his presence at the site.

8. In para 12 of the award, the tribunal has considered the injury aspect and has come to the conclusion that it is clear that the the deceased must not have been crushed under the wheel of the bus and has also observed and concluded that at the same time, it should be seen that it was a night time and if the man is dragged and falls and gone below the body of the bus, the person watching from behind may think that he is runover by the bus.

9. The tribunal has also observed in para 13 of the award in question that the deceased being not crushed in the accident does not help the appellant in any way. The tribunal observed that if the deceased had crush injuries, then, certainly, it would have disbelieved the evidence led by the original claimants because the position of the Gujarat ST Bus more particularly described by the witness for the original opponent is such that the door portion is behind the rear wheel and if a person falls down the door, there is no chance of any wheel of the said bus running over that man. Therefore, if there would have been crush wounds, it would have disbelieved the evidence led by the claimants but the evidence led by them is still remain open for consideration because there is no crush wound. The tribunal has also considered the circumstances on which oral and documentary evidence has been produced by the respective parties.

10. In para 16 of the award, the tribunal has observed as to what would be the effect of the evidence led by the claimants. The tribunal has observed that the tickets of the very bus and very route and issued at the very time when the bus started issued in very trip were found from the clothes of the deceased and after the bus had left, in the morning, the dead body was found and a report was made. The tribunal has clearly observed that there is no other plausible explanation coming forward as

to how the deceased had reached the place of accident if he had got down earlier. Again, when the conductor has been examined by the appellant before the tribunal, he ought to have stated the exact station for which the tickets were issued. For appreciating this aspect, the tribunal has considered the oral evidence of the Bus Conductor Shri P.G. Dhanga at Exh. 56 wherein he has stated regarding the starting of the bus from Godhra on 12.4.1982; that the bus had stopped at Sant road but the bus did not stop at Nandapura Railway Crossing Gate at all. He has denied in his evidence that anybody got down at Nandapura Crossing Gate. As per his evidence, no passengers had got down at Godhra and Nandapura crossing gate was not closed. The tribunal observed that however, when the tickets are produced in this case, it should have been got clarified that the tickets though issued for the very trip did not cover the place of accident at all and that even before Nandapura or rather say Godhra, the trip of the ticket holder terminated. The tribunal has observed that these circumstances are important; there may be cases wherein the same trip from Baroda to Dahod certain passengers from Baroda may go upto Halol, Kalol, Godhra and may not proceed thereafter to Dahod crossing railway crossing at Nandapura. The tribunal observed that the conductor was the best person who could state exactly at which station the holder of the tickets got into the bus and at which station he was to get down and this is not done and, therefore, the tribunal has observed that a great lacuna is there which has not been explained by the appellants. In para 17 of the award, the tribunal has also considered the oral evidence of the driver of the bus involved in the accident, at Exh. 54. At Exh. 54, driver Shri Ahmed Noor Habidbhai Chhipa has stated that the bus did not stop at Nandapura at all. However, his statement before the police has been produced and it has been proved by asking in contradiction that the bus had stopped at railway crossing gate either at Nandapura or at Salia. On the basis of these circumstances, the tribunal has recorded the finding that it is clear that the deceased was going in the very bus and that he was found dead on the road and, therefore, the say of the witness for the claimants namely Shri Lalabhai Dalal can be believed that a man was found getting into the bus could not get into it and was dragged and came under the bus. The tribunal has further observed that that the only discrepancy that the man was runover by the tyres of the bus can be ignored because of the other circumstances and their over whelming effect, more so, because it was a night time and a man may not remember exactly whether a person is runover by the wheel or not. In view of this evidence, it has been held by

the tribunal that the accident took place while the deceased was trying to get into the running bus and was dragged and fall down not by being run over by the bus. It has also been held by the tribunal that there was negligence on the part of the conductor and driver of the bus and on the basis of such evidence, the tribunal has held that the negligence of the driver has been proved. Then, in para 19 of the award, the tribunal has considered the aspect of contributory negligence on the part of the deceased and has considered the fact that the deceased died has been proved by the PM report but the tribunal was also of the view that the deceased also was negligent to the extent of 50 per cent in contribution to the accident and after recording such observations, the tribunal has answered issue NO.1 accordingly.

11. Thereafter, the tribunal has decided the question of quantum of the amount of compensation. For deciding this aspect, the tribunal has considered the evidence of respondent no.1 widow of the deceased wherein she has stated that her husband (deceased) was earning Rs.1000.00 to Rs.1200.00 per month and out of the said amount, he was giving Rs.700.00 p.m. to her per month and that he was working for the whole year. Brother of the respondent No.1 namely Gordhanlal Mangilal has been examined at Exh. 16 wherein he has stated that the deceased was earning Rs.1000.00 p.m. and was giving Rs.800.00 to his sister i.e. widow of the deceased. Thus, as regards income, there was no any specific evidence on record but the tribunal has considered the circumstances. The tribunal has considered two bills which were found from the cloth of the deceased. One bill is dated 15th December, 1981 from the merchant of Indore for Rs.4026.00 and the other one is of the same date for Rs.2330.40 ps. Both the bills were produced before the tribunal at Exh. 27 and 28. Therefore, on the basis of these two bills, the tribunal has believed that the deceased was doing the business of garlic and chillis.

12. The tribunal has considered in para 23 of the award that the respondent no.1 in her evidence deposed that her husband was earning Rs.1000.00 to Rs.1200.00 whereas in the petition, it was averred that the deceased was earning Rs.800.00 per month. Therefore, in view of such discrepancy in the pleading and the evidence, the tribunal considered that the business of the deceased was such that he himself had to go to buy and sell the vegetable articles and considering this fact and hard work which the deceased had to put in, the tribunal assessed monthly income of the deceased at Rs.500.00.

Thereafter, the tribunal has also considered the future income of the deceased after considering the decision in case of GSRTC versus Isubkhan Malik and another reported in 20 GLT at page 130 and has considered that if the deceased was doing a wholesale business on big scale, it would have increased much more but here the deceased was doing the business wherein he had to go for buying and selling the vegetables and he had to go in the weekly markets and, therefore, comparative rise of the income of the deceased would not be much as in the case of vegetable merchants and, therefore, based on such consideration, the tribunal assessed the income for the purpose of future loss of income at Rs.800.00 p.m. considering that at the time of his death, deceased was earning Rs.500.00 and that he would have earned more in future.

13. Then, in para 26 of the award, the tribunal has considered that out of Rs.800.00, because of the big family, the deceased hardly would have spent Rs.200.00 for himself and would have contributed Rs.600.00 for the family. The tribunal considered that it would be proper to apportion the amount of Rs.200.00 for the respondent no.1 widow and Rs.400.00 for each of the other claimants who were minor at the relevant time and held that the economic loss to the claimants would be of Rs.2400.00 per year for the widow of the deceased (Rs.200.00 x 12) and Rs.1200.00 per year for each of the minor claimants at the rate of Rs.100.00 per month. As regards age of the deceased, there was no any positive evidence on record but it was the say of the claimants in their claim petition that the age of the deceased was 35 years at the relevant time whereas as per the PM Report, the age of the deceased was of 40 years at the relevant time. Therefore, since there was no any positive evidence as regards age of the deceased, the tribunal believed the age of the deceased as per the PM Report and then considered the question of multiplier. The tribunal considered the decision reported in 1982 GLR page 28 wherein the age of the victim in accident was aged 45 years and multiplier of 16 was adopted and because he was the father of the deceased in that case. In view of that decision and considering the age of the deceased in this case to be 40 years, the tribunal adopted multiplier of 18 for with this multiplier, the tribunal calculated the amount of expectancy would be Rs.43,200.00 to the respondent NO.1 and Rs.21,500.00 to each of the minor claimants. Then, the tribunal added Rs.5000.00 on the head of loss of expectation of life and this amount was to be equally distributed amongst the claimants i.e. Rs.1000.00 each to each of the claimants. Then, the

considered that the claimants have claimed Rs.8000.00 for funeral expenses but since there was no any documentary evidence to that effect, the tribunal awarded Rs.2000.00 only for funeral and after death ceremonies.

14. In para 29 of the award in question, the tribunal held that the amount payable to the widow of the deceased would be of Rs.46,200.00 and the amount for each of the minor claimants would be of Rs.90,400.00 and after deducting the amount for the contributory negligence, the amount payable to the widow of the deceased would be Rs.23100.00 and Rs.11300.00 for each of the minor claimants and Rs. 68,300.00 and has, therefore, held that the claimants shall be entitled to Rs.68,300.00 with 6 per cent interest from the opponents jointly and severally.

We have considered the award in question made by the tribunal. The tribunal has considered the oral and documentary evidence as it appears from the award in question. The tribunal has rightly considered the panchanama which was produced before the tribunal vide Exh. 37; the tribunal has also rightly believed the evidence of respondent no.1 widow. and her witness at Exh. 44 and was also right in assessing the income of the deceased in absence of any documentary evidence but relying upon two bills which were found from the cloth of the deceased and has also rightly believed the letter of the PSI concerned wherein tickets in question were found from the cloth of the deceased and there was no rebuttal produced by the present appellant before the tribunal. Though conductor was examined before the tribunal, though the tickets were produced before the tribunal, the conductor has not clarified as to from which station the tickets were issued and upto which station, the tickets were issued. No such clarification has been made by the conductor while giving his oral evidence before the tribunal and, therefore, the tribunal was right in holding that the said tickets were purchased by the deceased on the basis of that evidence. The tribunal has also rightly believed the PM Report vide Exh. 40 and has rightly come to the conclusion that there was negligence on the part of the driver of the ST Bus and was right in awarding compensation after assessing the future income of the deceased at Rs.800.00 per month on the basis of two bills received from the clothes of the deceased and was right to infer that the deceased was doing the business on the basis of those two bills. Considering the entire award made by the tribunal, according to our opinion, the tribunal was right in deciding the issue in

question and has rightly granted compensation in favour of the respondents claimants. We, however, feel that the findings of the tribunal as regards conributory negligence of the deceased to the extent of 50 per cent are without any basis or evidence and from the award, it also appears that no such plea has ever been taken by the appellant before the tribunal nor any issue to that effect has been framed and no evidence to that effect has been led before the tribunal and yet the tribunal has considered contributory negligence to the extent of 50 percent and has accordingly reduced the amount of the award on that ground. However, since that part of the award has not been challenged, we would not enter any more on that aspect. Therefore, considering the adoption of multiplier of 18 while keeping in view the contributory negligence considered by the tribunal to the extent of 50 per cent, according to our opinion, the award in question is quite just and proper requiring no interference of this court in this appeal. The tribunal has rightly assessed the income of the deceased and has rightly awarded the amount under different heads. We, therefore, do not find any reason to interfere with the award in question. Therefore, there is no substance in this appeal and the same is therefore dismissed with no order as to costs.

29.8.2002. [K.R. Vyas, J.] [H.K. Rathod,J.]
Vyas.